No. 82-1874

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In the Supreme Court of the United States

OCTOBER TERM, 1983

DAVID W. DEAKYNE, PETITIONER

v.

DEPARTMENT OF THE ARMY CORPS OF ENGINEERS OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner contends that the court of appeals misconstrued a statute enacted in 1924 that conveyed certain lands and is relevant to the question whether his claim under the Quiet Title Act is time barred.

1. Petitioner brought this action against the United States under the Quiet Title Act, 28 U.S.C. 2409a, seeking to adjudicate the title to certain land in Delaware. In 1887, the State, having condemned the land, conveyed it to the United States. Petitioner's predecessor in interest was the condemnee. The United States was to use the land to build a canal, but it never did so.

Actions under the Quiet Title Act must be brought "within twelve years of the date upon which * * * the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C.

2409a(f). The Quiet Title Act is a waiver of soverign immunity; this limitations provision is therefore jurisdictional. See *Block* v. *North Dakota,* No. 81-2337 (May 2, 1983), slip op. 13. The question whether this action is barred by the limitations provision turns in part on the construction of the Act of March 15, 1924, ch. 213, 43 Stat. 245 (Pet. App. 35a-36a). The government contended in the court below that the passage of that Act gave petitioner's predecessor in interest adequate notice that the government claimed a fee simple interest in the disputed land; because petitioner did not bring this action until 1978, far more than 12 years later, petitioner, the government contended, is barred from challenging its claim to a fee.[1]

The 1924 Act reconveyed to the State of Delaware some of the other land — not the tract in issue here — that Delaware had conveyed to the United States in 1887. The government asserted that this Act purported to reconvey a fee simple, thus making it clear that the government claimed a fee simple interest in *all* the land Delaware had conveyed to it in 1887. Petitioner asserted that the 1924 Act purported to reconvey only an easement.

The court of appeals did not finally determine whether the 1924 Act gave petitioner's predecessor in interest adequate notice — it expressly "intimate[d] no view" (Pet. App. 8a) on that question — but it did hold that the Act purported to convey a fee simple. In reaching this conclusion, the court relied in part on legislative history — a letter (Pet. App. 37a-38a) from the Secretary of War to the Senate committee chairman on the proposed legislation that became the 1924 Act. The court of appeals then remanded to give petitioner an opportunity to show that, even though

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[1]The limitations provision bars claims that accrued more than 12 years before the Quiet Title Act was passed (see *Block* v. *North Dakota, supra,* slip op. 9-10); petitioner does not contend otherwise.

the Act in fact purported to convey a fee simple interest in other lands conveyed in 1887, it did not give petitioner's predecessor in interest adequate notice of the government's claim to a fee simple interest in the land in issue here. Pet. App. 10a-11a.[2]

2. Petitioner's sole claim before this Court is that the court of appeals erroneously interpreted the 1924 Act. Petitioner insists that that statute in fact purported to convey only an easement. In particular, petitioner asserts that the court violated the Due Process Clause by considering the legislative history of the statute when the meaning of the statute is clear on its face. See Pet. 12.

Petitioner's errors are manifold: an erroneous interpretation of a statute does not constitute a violation of the Due Process Clause; apparently unambiguous statutory language does not preclude a court from examining the legislative history (*e.g., Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 9-10 (1976)); and petitioner's own account (Pet. 7-9) shows that the language of the 1924 Act was not unambiguous.

Whether or not the court below correctly interpreted the 1924 Act, however, it is entirely clear that this case does not warrant the Court's review. The interpretation of that statute may not even affect the outcome of *this* case, because

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[2]The court explained that there were two ways in which petitioner might show that his predecessor in interest did not have adequate notice that the government claimed a fee simple in the disputed land — by showing that the predecessor in interest reasonably "read the 1924 Act to be a relinquishment of an easement rather than a conveyance of a fee" and by showing that the predecessor in interest reasonably did not understand "on the basis of the 1924 Act, that Congress' claim to a fee extended to *all* the lands condemned pursuant to the 1887 Delaware statute, and not just to those lands actually re-conveyed." Pet. App. 10a-11a.

petitioner may yet show that the Act did not give his predecessor in interest notice sufficient to start the running of the 12 year limitations period. Review by this Court of his present contention would therefore be premature. Moreover, petitioner does not suggest any reason to believe that the interpretation of this obscure statute is a question of significant practical importance. See Sup. Ct. R. 17.1(c).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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